

*Secretary's copy*

**Amendment.**

**No. 503.**

INTRODUCED BY COMMITTEE ON JUDICIARY AND JUDICIAL DEPARTMENT.

NOVEMBER 13TH, 1878.

READ, ORDERED TO LIE ON TABLE, AND NINE HUNDRED AND SIXTY COPIES  
PRINTED.

ARTICLE VI.

JUDICIAL DEPARTMENT.

*adapted*

SECTION 1. The judicial power of the State shall be vested in the  
2. Senate sitting as a Court of Impeachment, in a Supreme Court, Superior  
3. Courts, Justices of the Peace, and such inferior Courts as the Legislature  
4. may establish in any incorporated city or town, or city and county.

SEC. 2. The Supreme Court shall consist of a Chief Justice and six  
2. Associate Justices. The Court may sit in departments and in bank, and shall  
3. always be open for the transaction of business. There shall be two depart-  
4. ments, denominated, respectively, Department One and Department Two.  
5. The Chief Justice shall assign three of the Associate Justices to each depart-  
6. ment, and such assignment may be changed by him from time to time. The

7 Associate Justices shall be competent to sit in either department, and may  
8 interchange with each other by agreement among themselves or as ordered  
9 by the Chief Justice. Each of the departments shall have the power to hear  
10 and determine causes and all questions arising therein, subject to the provis-  
11 ions hereinafter contained in relation to the Court in bank. The presence of  
12 three Justices shall be necessary to transact any business in either of the  
13 departments, except such as may be done at Chambers, and the concurrence  
14 of three Justices shall be necessary to pronounce a judgment. The Chief  
15 Justice shall apportion the business to the departments, and may, in his dis-  
16 cretion, order any cause pending before the Court to be heard and decided  
17 by the Court in bank. The order may be made before or after judgment  
18 pronounced by a department; but where a cause has been allotted to one of  
19 the departments, and a judgment pronounced thereon, the order must be made  
20 within thirty days after such judgment, and concurred in by two Associate  
21 Justices, and if so made it shall have the effect to vacate and set aside the  
22 judgment. If the order be not made within the time above limited, the judg-  
23 ment shall be final. No judgment by a department shall become final until  
24 the expiration of the period of thirty days aforesaid, unless approved by the  
25 Chief Justice, in writing, with the concurrence of two Associate Justices.  
26 The Chief Justice may convene the Court in bank at any time, and shall be  
27 the presiding Justice of the Court when so convened. The concurrence of  
28 four Justices present at the argument shall be necessary to pronounce a judg-  
29 ment in bank; but if four Justices, so present, do not concur in a judgment,  
30 then all the Justices qualified to sit in the cause shall hear the argument; but  
31 to render a judgment a concurrence of four Judges shall be necessary. In  
32 the determination of causes, all decisions of the Court in bank or in depart-  
33 ments shall be given in writing, and the grounds of the decision shall be  
34 stated. The Chief Justice may sit in either department, and shall preside

Amend Section Two by

striking out the following sentence  
beginning on line 36 which reads  
as follows -

All sessions of the Court, whether  
in bank or in departments, shall be  
held at the capital of the State.

64  
45-

Waters

Adapted

35 when so sitting, but the Justices assigned to each department shall select one  
 36 of their number as presiding Justice. All sessions of the Court, whether in  
 37 bank or in departments, shall be held at the Capital of the State. In case of  
 38 the absence of the Chief Justice from the place at which the Court is held, or  
 39 his inability to act, the Associate Justices shall select one of their own num-  
 40 ber to perform the duties and exercise the powers of the Chief Justice during  
 41 such absence or inability to act.

SEC. 3. The Chief Justice and the Associate Justices shall be elected  
 2 by the qualified electors of the State at large, at the general State elections,  
 3 at the times and places that State officers are elected; and the term of office  
 4 shall be twelve years, from and after the first Monday of January next suc-  
 5 ceeding their election; *provided*, that the six Associate Justices elected at the  
 6 first election shall, at their first meeting, so classify themselves, by lot, that  
 7 two of them shall go out of office at the end of four years, two of them at  
 8 the end of eight years, and two of them at the end of twelve years, and an  
 9 entry of such classification shall be made in the minutes of the Court in  
 10 bank, signed by them, and a duplicate thereof shall be filed in the office of  
 11 the Secretary of State. If a vacancy occur in the office of a Justice, the  
 12 Governor shall appoint a person to hold the office until the election and  
 13 qualification of a Justice to fill the vacancy, which election shall take place

*Adapted*

Amend Section four by

Striking out the words "commu-  
ting to felony" <sup>in seventh line</sup> and inserting  
the words "prosecuted by indict-  
ment" or information "in a Court  
of Record"

adopted

Truy

14 at the next succeeding general election, and the Justice so elected shall hold  
15 the office for the remainder of the unexpired term. The first election of the  
16 Justices shall be at the first general election after the adoption and ratifica-  
17 tion of this Constitution.

SEC. 4. The Supreme Court shall have appellate jurisdiction in all  
2 cases in equity; also in all cases at law which involve the title or possession  
3 of real estate, or the legality of any tax, impost, assessment, toll, or munici-  
4 pal fine, or in which the demand, exclusive of interest, or the value of the  
5 property in controversy, amounts to three hundred dollars; also in cases of  
6 forcible entry and detainer, and in all such probate matters as may be pro-  
7 vided by law; also in all criminal cases amounting to felony on questions of  
8 law alone. The Court shall also have power to issue writs of mandamus, cer-  
9 tiorari, prohibition, and habeas corpus, and also all writs necessary or proper  
10 to the complete exercise of its appellate jurisdiction. Each of the Justices  
11 shall have power to issue writs of habeas corpus to any part of the State,  
12 upon petition by or on behalf of any person held in actual custody, and may

Sec. 5.

Amend Sec 5 as follows:

Adopted.

In line 15 strike out  
"original jurisdiction" and  
insert, "process" Wilson

Adopted.

13 make such writs returnable before himself, or the Supreme Court, or before  
14 any Superior Court in the State, or before any Judge thereof.

SEC. 5. The Superior Courts shall have original jurisdiction in all  
2 cases in equity, and in all cases at law which involve the title or possession  
3 of real property, or the legality of any tax, impost, assessment, toll, or municipal  
4 fine, and in all other cases in which the demand, exclusive of interest or the  
5 value of the property in controversy, amounts to three hundred dollars, and  
6 in all criminal cases amounting to felony, and cases of misdemeanor not oth-  
7 erwise provided for; also, in actions of forcible entry and detainer, of pro-  
8 ceedings in insolvency, of actions to prevent or abate a nuisance; also, of all  
9 matters of probate, and, also, of divorce and for annulment of marriage, and  
10 all such special cases and proceedings as are not otherwise provided for. And  
11 said Courts shall have the power of naturalization, and to issue papers there-  
12 for. They shall have appellate jurisdiction in such cases arising in Justices'  
13 and other inferior Courts in their respective counties as may be prescribed by  
14 law. Said Courts shall be always open (legal holidays and non-judicial days  
15 excepted), and their ~~original jurisdiction~~ <sup>process</sup> shall extend to all parts of the State.  
16 Said Courts, and their Judges, shall have power to issue writs of mandamus,



Sec.  
6.

Amend the amendment offered by the  
gentleman from Kansas by adding  
Utah, and one for the Counties  
of El Dorado and Alpin, and  
Adopted. Larkin

Sec. 6, line 4.

Amend Sec. 6 by inserting after  
the word "election" in the 4<sup>th</sup> line  
"provided, that, until otherwise ordered  
by the Legislature, only one judge shall  
be elected for the Counties of Yuba and  
Sutter, and"  
Adopted.

Adopted.

Sec. 5.

Amend Sec 5 by adding  
the words;

"Injunctions and writs of prohib-  
ition may be issued and  
served on legal holidays  
and non-judicial days."

Adopted *Unanim.*

Amend Section 6<sup>th</sup> by

Inserting in line 14 after the word

Los Angeles, Sonoma. *Overtan.*  
Adopted

*Overtan*

17 certiorari, prohibition, quo warranto, and habeas corpus, on petition by or on  
18 behalf of any person in actual custody, in their respective counties.

SEC. 6. There shall be in each of the organized counties, or cities and  
2 counties, of the State, a Superior Court, for each of which at least one Judge  
3 shall be elected by the qualified electors of the county, or city and county, at  
4 the general State election; <sup>(Rule 11)</sup> provided, that in the City and County of San Fran-  
5 cisco there shall be elected twelve Judges of the Superior Court, any one or  
6 more of whom may hold Court. There may be as many sessions of said  
7 Court, at the same time, as there are Judges thereof. The said Judges shall  
8 choose from their own number a presiding Judge, who may be removed at  
9 their pleasure. He shall distribute the business of the Court among the  
10 Judges thereof, and prescribe the order of business. The judgments, orders,  
11 and proceedings of any session of the Superior Court, held by any one or  
12 more of the Judges of said Courts, respectively, shall be equally effectual as  
13 if all the Judges of said respective Courts presided at such session. In each  
14 of the Counties of Sacramento, Los Angeles, <sup>Sonoma,</sup> and Alameda, there shall be  
15 elected two such Judges. The term of office of Judges of the Superior Courts

*Adopted and amended.*

16 shall be six years, from and after the first Monday of January next succeed-  
17 ing their election ; *provided*, that the twelve Judges of the Superior Court,  
18 elected in the City and County of San Francisco at the first election held  
19 under this Constitution, shall, at their first meeting, so classify themselves, by  
20 lot, that four of them shall go out of office at the end of two years, and four  
21 of them shall go out of office at the end of four years, and four of them shall  
22 go out of office at the end of six years, and an entry of such classification  
23 shall be made in the minutes of the Court, signed by them, and a duplicate  
24 thereof filed in the office of the Secretary of State. The first election of  
25 Judges of the Superior Courts shall take place at the first general election  
26 held after the adoption and ratification of this Constitution. If a vacancy  
27 occur in the office of Judge of a Superior Court, the Governor shall appoint a  
28 person to hold the office until the election and qualification of a Judge to fill  
29 the vacancy, which election shall take place at the next succeeding general  
30 election, and the Judge so elected shall hold office for the remainder of the  
31 unexpired term.

*adopted*

SEC. 7. In any county, or city and county, other than the City and  
 2 County of San Francisco, in which there shall be more than one Judge of  
 3 the Superior Court, the Judges of such Court may hold as many sessions of  
 4 said Court at the same time as there are Judges thereof, and shall apportion  
 5 the business among themselves as equally as may be.

SEC. 8.

2 in any county,  
 3 upon the request

*Amendment to Section  
 § 8  
 Amend by adding to  
 the end of the section,  
 the words,  
 But a cause in a  
 Superior Court may  
 be tried by a Judge  
 Pro Tempore, who  
 must be a member  
 of the bar agreed upon  
 in writing by the parties  
 litigant or their att-  
 orneys of record; app-  
 roved by the court, and  
 sworn to try the  
 Cause*

SEC. 9.

2 to any judicial  
 3 the State for m-  
 4 feited his office.  
 5 the members of  
 6 voting therefor,

*adopted*

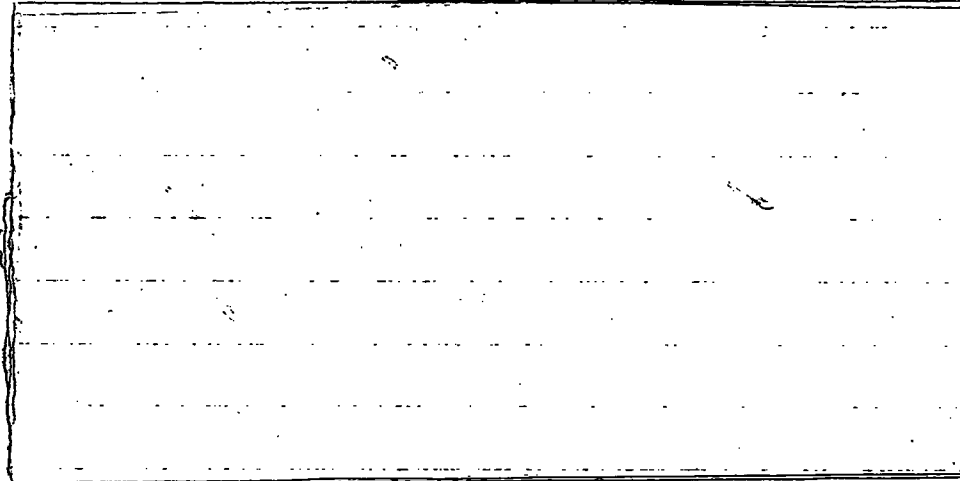
*Offered by Mr. Barry  
 Adopted.*

*withdrew*

*73  
 14*

*adapted*

SEC. 7. In any county, or city and county, other than the City and  
 2 County of San Francisco, in which there shall be more than one Judge of  
 3 the Superior Court, the Judges of such Court may hold as many sessions of  
 4 said Court at the same time as there are Judges thereof, and shall apportion  
 5 the business among themselves as equally as may be.



SEC. 8. A Judge of any Superior Court may hold a Superior Court  
 2 in any county, at the request of a Judge of the Superior Court thereof, and  
 3 upon the request of the Governor it shall be his duty so to do.

*adapted*

SEC. 9. The Legislature shall have no power to grant leave of absence  
 2 to any judicial officer; and any such officer who shall absent himself from  
 3 the State for more than sixty consecutive days shall be deemed to have for-  
 4 feited his office. The Legislature of the State may at any time, two-thirds of  
 5 the members of the Senate and two-thirds of the members of the Assembly  
 6 voting therefor, increase or diminish the number of Judges of the Superior

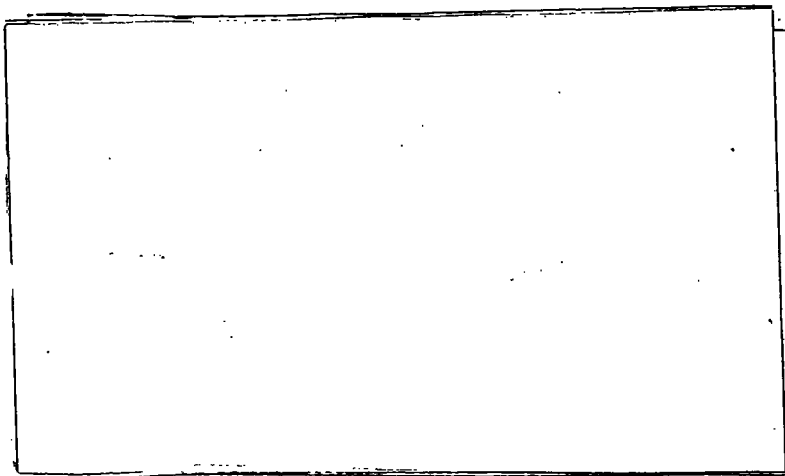
7 Court in any county, or city and county, in the State; *provided*, that no such  
8 reduction shall affect any Judge who has been elected.

*Adopted*

SEC. 10. Justices of the Supreme Court, and Judges of the Superior  
2 Courts, may be removed by concurrent resolution of both Houses of the  
3 Legislature, adopted by a two-third vote of each House. All other judicial  
4 officers, except Justices of the Peace, may be removed by the Senate on the  
5 recommendation of the Governor, but no removal shall be made by virtue of  
6 this section, unless the cause thereof be entered on the Journal, <sup>nor</sup> ~~or~~ unless the  
7 party complained of has been served with a copy of the complaint against  
8 him, and shall have had an opportunity of being heard in his defense. On  
9 the question of removal, the ayes and noes shall be entered on the Journal.



SEC. 11. ~~There shall be one Justice of the Peace elected in each town-~~  
 2 ~~ship in the State,~~ and the Legislature shall determine the number of Justices  
 3 of the Peace to be elected in each <sup>Township</sup> incorporated city and town, or city and  
 4 county, and shall fix by law the powers, duties, and responsibilities of Justices  
 5 of the Peace; *provided*, such powers shall not in any case trench upon the  
 6 jurisdiction of the several Courts of record, except that said Justices shall  
 7 have concurrent jurisdiction with the Superior Courts in cases of forcible  
 8 entry and detainer, where the rental value does not exceed twenty-five dollars  
 9 per month and where the whole amount of damages claimed does not exceed  
 10 two hundred dollars.



*adopted*

SEC. 12. The Supreme Court, the Superior Courts, and such other  
 2 Courts as the Legislature shall prescribe, shall be Courts of record.

STATE OF CALIFORNIA,  
STATE LIBRARY.

Amend Sec 11. by adding  
after "dollars" in line 10 the words  
"; and in cases to enforce  
and foreclose liens on  
personal property when  
the neither the amount of  
the lien nor the value of  
the property <sup>amounts to</sup> exceeds three  
hundred dollars

*adapted*

*Freeman*

art, the Superior Courts, and such other  
cribe, shall be Courts of record.

Amend Sec 11 by striking out all after  
the word "elector" in line 3 to and  
including the word County in line 4  
and inserting "in townships, incorporated  
cities and towns, or cities and Counties"

By West

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23

5-2

3-2

Amended Section Eleven by striking out of lines one and two the following words:

"There shall be one Justice of the Peace elected in each Township in the State, and: also, insert and add, in line three, after the word "Each" the word Township."

Offered by H. Mills.

adapled.

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*adapted*

SEC. 13. The Legislature shall fix by law the jurisdiction of any inferior Courts which may be established in pursuance of section one of this article, and shall fix by law the powers, duties, and responsibilities of the Judges thereof.

Amend Sec. 14 by inserting after the word "compensation" in the 3<sup>d</sup> line the words, "which compensation shall not be increased or diminished during the term for which they shall have been elected."

*adapted*

• *Buchan*

*adopted*

SEC. 13. The Legislature shall fix by law the jurisdiction of any inferior Courts which may be established in pursuance of section one of this article, and shall fix by law the powers, duties, and responsibilities of the Judges thereof.

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SEC. 14. The Legislature shall provide for the election of a Clerk of the Supreme Court, County Clerks, District Attorneys, Sheriffs, and other necessary officers, and shall fix by law their duties and compensation. County Clerks shall be ex officio Clerks of the Courts of record in and for their respective counties, or cities and counties. The Legislature may also provide for the appointment by the several Superior Courts of one or more Commissioners in their respective counties, or cities and counties, with authority to perform Chamber business of the Judges of the Superior Courts, to take depositions, and perform such other business connected with the administration of justice as may be prescribed by law.

*Adopted*

SEC. 15. No judicial officer, except Justices of the Peace and Court

2 Commissioners, shall receive to his own use any fees or perquisites of office.

*Adopted*

SEC. 16. The Legislature shall provide for the speedy publication of

2 such opinions of the Supreme Court as it may deem expedient, and all opin-

3 ions shall be free for publication by any person.

Sec. 17.

*Section 17- change by substituting*  
*in line 7 for words "The Super"*  
*rior Judges shall be divided*  
*into four classes-" as follows*

*"Not to otherwise changed by the*  
*Legislature the Superior Judges*  
*shall be divided into four*  
*classes, with the following annual*  
*Salaries."*

*Wilson for Com.*

*- Adopted*

*Supervised by McKim (initials)*

SEC. 15. No judicial officer, except Justices of the Peace and Court

2 Commissioners, shall receive to his own use any fees or perquisites of office.

SEC. 16. The Legislature shall provide for the speedy publication of

2 such opinions of the Supreme Court as it may deem expedient, and all opin-

3 ions shall be free for publication by any person.

*Strike out words erased and insert in  
their stead, "until otherwise changed by the Legislature,  
the Superior Judges shall be divided into four classes,  
with the following annual salaries:*

SEC. 17. The Justices of the Supreme Court and Judges of the Supe-

2 rior Courts shall severally, at stated times during their continuance in office,

3 receive from the State treasury, for their services, a compensation which shall

4 not be increased or diminished during the term for which they shall have been

5 elected. During the term of the first Judges elected under this Constitution,

6 the annual salaries of the Justices of the Supreme Court shall be six thousand

7 dollars each. ~~The Superior Judges shall be divided into four classes:~~ Those

8 of the City and County of San Francisco, and of the Counties of Alameda,

9 San Joaquin, Los Angeles, Santa Clara, Sacramento, and Sonoma, shall con-

10 stitute the first class, and shall each receive an annual salary of five thousand

11 dollars, payable quarterly; those of the Counties of Butte, El Dorado, Amador,

12 Colusa, Contra Costa, Humboldt, Mendocino, Monterey, Napa, Nevada, Placer,



Insert line 7 after word "End"  
as follows - "Until otherwise changed  
by the Legislature."

adopted  
Revision of 1<sup>st</sup> Draft

Amend, by striking out all after the words, dollars each in 7<sup>th</sup> line and inserting the following

The superior Court judges shall receive an Annual salary of thirty five hundred dollars each, payable quarterly, except the judges of the City and county of San Francisco, and the counties of Alameda, San Joaquin, Los Angeles, San Clara, Sacramento and Sonoma, which shall receive <sup>five hundred</sup> ~~five hundred~~ dollars each -

adapted

Walker  
of ~~San Francisco~~

Knows to Amend by inserting  
after the word "San Bernardino"  
in line 13, the words "Lugo and  
Mond,"

adapted Reddy <sup>referred  
by Walker  
Embels</sup>

Amend amendment by striking out the words  
"San Diego" in third class, and placing  
the words "San Diego" in second class.

Adopted

Ayers

Defended  
by Messrs  
H. B. Smith

After the word "office" where it first occurs in 2<sup>d</sup> line, insert, "or public employment", and after the second "office", insert "or employment".

So that the section will read as follows:

Sec. 18. The Justices of the Supreme Court, and the Judges of the Superior Courts, shall be ineligible to any other office or public employment than a judicial office or employment during the term for which they shall have been elected.

By Morse      accepted

13 Santa Cruz, Solano, Tulare, Yolo, Kern, <sup>San Diego</sup> Yuba, and San Bernardino, shall  
 14 constitute the second class, and shall receive an annual salary of four thousand  
 15 dollars each, payable quarterly; those of the Counties of Calaveras, Fresno,  
 16 Lake, Marin, Merced, Plumas, San Benito, ~~San Diego~~, San Luis Obispo, San  
 17 Mateo, Santa Barbara, Sierra, Shasta, Siskiyou, Stanislaus, Sutter, Tehama,  
 18 Tuolumne, and Ventura, shall constitute the third class, and receive an annual  
 19 salary of three thousand dollars each, payable quarterly; and those of all other  
 20 counties of the State, not above enumerated, shall constitute the fourth class,  
 21 and receive an annual salary of two thousand dollars each, payable quarterly.

SEC. 18. The Justices of the Supreme Court, and the Judges of the  
 2 Superior Courts, shall be ineligible to any other office than a judicial office  
 3 during the term for which they shall have been elected.

Substitute for Section 22

Section 22. No Judge of a Court of record shall practice law in any Court of this State during ~~his~~ continuance in office

adopted

Moreland

60

Amend Sec 22 as follows.

Strike out all the section up to the word "shall" in first line and insert as follows:

The justices of the Supreme Court  
and the judges of the Superior Courts.

Hilborn

advised

superceded by  
Mandate Amendment



amend Section 19 as follows

After the word

~~and~~ "May"

in line 2 add and insert the words  
except in criminal prosecutions  
for libel

Herrington

Amend Section 21  
line 3 after the word  
Salary by adding  
not to exceed

adoption

Larkin

SEC. 22. The Judges and Justices of the Peace shall not practice law

2 in any Court of the State during their continuance in office.

SEC. 19. Judges shall not charge juries with respect to matters of fact,  
2 but may state the testimony and declare the law.

*amended*  
SEC. 20. The style of all process shall be, "The People of the State of  
2 California," and all prosecutions shall be conducted in their name and by their  
3 authority.

SEC. 21. The Justices shall appoint a Reporter of the decisions of the  
2 Supreme Court, who shall hold his office and be removable at their pleasure,  
3 He shall receive an annual salary of *not to exceed* twenty-five hundred dollars, payable  
4 quarterly.

SEC. 22. The Judges and Justices of the Peace shall not practice law  
2 in any Court of the State during their continuance in office.

substitute for ~~the~~ sec 24

No one shall be eligible to the office  
of justice of the Supreme Court or  
to the office of judge of a Superior  
Court unless he shall have been  
admitted to practice before the  
Supreme Court of the State

Shuntiff

adopted

SEC. 23. A grand jury shall be composed of twelve jurors, and a concurrence of nine shall be necessary to the making of a presentment or the finding of an indictment.

SEC. 24. No one shall be eligible to the office of Justice of the Supreme Court unless he be at least thirty-five years of age, and shall have been admitted to practice before the Supreme Court of the State; and no one shall be eligible to the office of Judge of a Superior Court unless he be at least thirty years of age, and shall have been admitted to practice before the Supreme Court of the State.

July  
1944

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Amendment.

No. 503.

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INTRODUCED BY COMMITTEE ON JUDICIARY AND JUDICIAL DEPARTMENT.

NOVEMBER 13TH, 1878.

AS AMENDED IN COMMITTEE OF THE WHOLE.

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ARTICLE VI.

JUDICIAL DEPARTMENT.

SECTION 1. The judicial power of the State shall be vested in the  
2 Senate sitting as a Court of Impeachment, in a Supreme Court, Superior  
3 Courts, Justices of the Peace, and such inferior Courts as the Legislature  
4 may establish in any incorporated city or town, or city and county.

SEC. 2. The Supreme Court shall consist of a Chief Justice and six  
2 Associate Justices. The Court may sit in departments and in bank, and shall  
3 always be open for the transaction of business. There shall be two depart-  
4 ments, denominated, respectively, Department One and Department Two.  
5 The Chief Justice shall assign three of the Associate Justices to each depart-  
6 ment, and such assignment may be changed by him from time to time. The  
7 Associate Justices shall be competent to sit in either department, and may  
8 interchange with each other by agreement among themselves or as ordered  
9 by the Chief Justice. Each of the departments shall have the power to hear  
10 and determine causes and all questions arising therein, subject to the provis-  
11 ions hereinafter contained in relation to the Court in bank. The presence of

12 three Justices shall be necessary to transact any business in either of the  
13 departments, except such as may be done at Chambers, and the concurrence  
14 of three Justices shall be necessary to pronounce a judgment. The Chief  
15 Justice shall apportion the business to the departments, and may, in his dis-  
16 cretion, order any cause pending before the Court to be heard and decided  
17 by the Court in bank. The order may be made before or after judgment  
18 pronounced by a department; but where a cause has been allotted to one of  
19 the departments, and a judgment pronounced thereon, the order must be made  
20 within thirty days after such judgment, and concurred in by two Associate  
21 Justices, and if so made it shall have the effect to vacate and set aside the  
22 judgment. If the order be not made within the time above limited, the judg-  
23 ment shall be final. No judgment by a department shall become final until  
24 the expiration of the period of thirty days aforesaid, unless approved by the  
25 Chief Justice, in writing, with the concurrence of two Associate Justices.  
26 The Chief Justice may convene the Court in bank at any time, and shall be  
27 the presiding Justice of the Court when so convened. The concurrence of  
28 four Justices present at the argument shall be necessary to pronounce a judg-  
29 ment in bank; but if four Justices, so present, do not concur in a judgment,  
30 then all the Justices qualified to sit in the cause shall hear the argument; but  
31 to render a judgment a concurrence of four Judges shall be necessary. In  
32 the determination of causes, all decisions of the Court in bank or in depart-  
33 ments shall be given in writing, and the grounds of the decision shall be  
34 stated. The Chief Justice may sit in either department, and shall preside  
35 when so sitting, but the Justices assigned to each department shall select one  
36 of their number as presiding Justice. All sessions of the Court, whether in  
37 bank or in departments, shall be held at the Capital of the State. In case of  
38 the absence of the Chief Justice from the place at which the Court is held, or  
39 his inability to act, the Associate Justices shall select one of their own num-

ber to perform the duties and exercise the powers of the Chief Justice during  
such absence or inability to act.

The following is section two, as amended on motion of Mr. Waters, and  
adopted:

[SEC. 2. The Supreme Court shall consist of a Chief Justice and six  
Associate Justices. The Court may sit in departments and in bank, and shall  
always be open for the transaction of business. There shall be two depart-  
ments, denominated, respectively, Department One and Department Two.  
The Chief Justice shall assign three of the Associate Justices to each depart-  
ment, and such assignment may be changed by him from time to time. The  
Associate Justices shall be competent to sit in either department, and may  
interchange with each other by agreement among themselves or as ordered  
by the Chief Justice. Each of the departments shall have the power to hear  
and determine causes and all questions arising therein, subject to the provis-  
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cretion, order any cause pending before the Court to be heard and decided  
by the Court in bank. The order may be made before or after judgment  
pronounced by a department; but where a cause has been allotted to one of  
the departments, and a judgment pronounced thereon, the order must be made  
within thirty days after such judgment, and concurred in by two Associate  
Justices, and if so made it shall have the effect to vacate and set aside the  
judgment. If the order be not made within the time above limited, the judg-  
ment shall be final. No judgment by a department shall become final until

*cross Amendment*

*Adopted*



11-1-18

adopted

Amend Section 2 by inserting  
after the word Judgment in the  
22<sup>nd</sup> line, the words.

"Any ~~three~~<sup>four</sup> Justices may, either  
before or after judgment by a de-  
partment, order a case to be heard  
in bank."

Cross

24 the expiration of the period of thirty days aforesaid, unless approved by the  
25 Chief Justice, in writing, with the concurrence of two Associate Justices.  
26 The Chief Justice may convene the Court in bank at any time, and shall be  
27 the presiding Justice of the Court when so convened. The concurrence of  
28 four Justices present at the argument shall be necessary to pronounce a judg-  
29 ment in bank; but if four Justices, so present, do not concur in a judgment,  
30 then all the Justices qualified to sit in the cause shall hear the argument; but  
31 to render a judgment a concurrence of four Judges shall be necessary. In  
32 the determination of causes, all decisions of the Court in bank or in depart-  
33 ments shall be given in writing, and the grounds of the decision shall be  
34 stated. The Chief Justice may sit in either department, and shall preside  
35 when so sitting, but the Justices assigned to each department shall select one  
36 of their number as presiding Justice. In case of the absence of the Chief  
37 Justice from the place at which the Court is held, or his inability to act, the  
38 Associate Justices shall select one of their own number to perform the duties  
39 and exercise the powers of the Chief Justice during such absence or inability  
40 to act.]

SEC. 3. The Chief Justice and the Associate Justices shall be elected  
2 by the qualified electors of the State at large, at the general State elections,  
3 at the times and places that State officers are elected; and the term of office  
4 shall be twelve years, from and after the first Monday of January next suc-  
5 ceeding their election; *provided*, that the six Associate Justices elected at the  
6 first election shall, at their first meeting, so classify themselves, by lot, that  
7 two of them shall go out of office at the end of four years, two of them at the  
8 end of eight years, and two of them at the end of twelve years, and an entry  
9 of such classification shall be made in the minutes of the Court in bank,  
10 signed by them, and a duplicate thereof shall be filed in the office of the

11 Secretary of State. If a vacancy occur in the office of a Justice, the Governor  
12 shall appoint a person to hold the office until the election and qualification of  
13 a Justice to fill the vacancy, which election shall take place at the next suc-  
14 ceeding general election, and the Justice so elected shall hold the office for  
15 the remainder of the unexpired term. The first election of the Justices shall  
16 be at the first general election after the adoption and ratification of this Con-  
17 stitution.

SEC. 4. The Supreme Court shall have appellate jurisdiction in all  
2 cases in equity; also in all cases at law which involve the title or possession  
3 of real estate, or the legality of any tax, impost, assessment, toll, or munici-  
4 pal fine, or in which the demand, exclusive of interest, or the value of the  
5 property in controversy, amounts to three hundred dollars; also in cases of  
6 forcible entry and detainer, and in all such probate matters as may be pro-  
7 vided by law; also in all criminal cases amounting to felony on questions of  
8 law alone. The Court shall also have power to issue writs of mandamus, cer-  
9 tiorari, prohibition, and habeas corpus, and also all writs necessary or proper  
10 to the complete exercise of its appellate jurisdiction. Each of the Justices  
11 shall have power to issue writs of habeas corpus to any part of the State,  
12 upon petition by or on behalf of any person held in actual custody, and may  
13 make such writs returnable before himself, or the Supreme Court, or before  
14 any Superior Court in the State, or before any Judge thereof.

The following is section four, as amended on motion of Mr. Terry, and  
adopted.

[SEC. 4. The Supreme Court shall have appellate jurisdiction in all  
2 cases in equity; also, in all cases at law which involve the title or possession  
3 of real estate, or the legality of any tax, impost, assessment, toll, or munici-  
4 pal fine, or in which the demand, exclusive of interest, or the value of the

*Amended*

*Amendment*

Amend sec. 4. as follows.

insert after the word "equity"  
in line 2 these words,  
"except such as arise in  
"justice's courts"

adopted

Sec. 4. 21 80

Ralph

*adapted*

5 property in controversy, amounts to three hundred dollars; also in cases of  
 6 forcible entry and detainer, and in all such probate matters as may be pro-  
 7 vided by law; also, in all criminal cases prosecuted by indictment, or informa-  
 8 tion in a Court of record on questions of law alone. The Court shall also  
 9 have power to issue writs of mandamus, certiorari, prohibition, and habeas  
 10 corpus, and, also, all writs necessary or proper to the complete exercise of its  
 11 appellate jurisdiction. Each of the Justices shall have power to issue writs  
 12 of habeas corpus to any part of the State, upon petition by or on behalf of any  
 13 person held in actual custody, and may make such writs returnable before  
 14 himself, or the Supreme Court, or before any Superior Court in the State, or  
 15 before any Judge thereof.]

SEC. 5. The Superior Courts shall have original jurisdiction in all  
 2 cases in equity, and in all cases at law which involve the title or possession of  
 3 real property, or the legality of any tax, impost, assessment, toll, or municipal  
 4 fine, and in all other cases in which the demand, exclusive of interest or the  
 5 value of the property in controversy, amounts to three hundred dollars, and  
 6 in all criminal cases amounting to felony, and cases of misdemeanor not oth-  
 7 erwise provided for; also, in actions of forcible entry and detainer, of pro-  
 8 ceedings in insolvency, of actions to prevent or abate a nuisance; also, of all  
 9 matters of probate, and, also, of divorce and for annulment of marriage, and  
 10 all such special cases and proceedings as are not otherwise provided for. And  
 11 said Courts shall have the power of naturalization, and to issue papers there-  
 12 for. They shall have appellate jurisdiction in such cases arising in Justices'  
 13 and other inferior Courts in their respective counties as may be prescribed by  
 14 law. Said Courts shall be always open (legal holidays and non-judicial days  
 15 excepted), and their original jurisdiction shall extend to all parts of the State.  
 16 Said Courts, and their Judges, shall have power to issue writs of mandamus,

Amend Sec 5 by inserting  
after the word be in line 19  
the words "issued and"

adopted

Henry

Amend Section 5 by inserting after the word "State" in line 15 the following: Provided: That all actions for the recovery of the possession of ~~or~~ quieting the title to, or for the enforcement of liens upon, real Estate, shall be commenced in the County in which the <sup>or any part of</sup> real estate <sup>thereof</sup> affected by such action or actions is situated

adapted Crouch

17 certiorari, prohibition, quo warranto, and habeas corpus, on petition by or on  
18 behalf of any person in actual custody, in their respective counties.

The following is section five, as amended on motion of Messrs. S. M.  
Wilson and Freeman :

[SEC. 5. The Superior Court shall have original jurisdiction in all  
2 cases in equity, and in all cases at law which involve the title or possession of  
3 real property, or the legality of any tax, impost, assessment, toll, or municipal  
4 fine, and in all other cases in which the demand, exclusive of interest or the  
5 value of the property in controversy, amounts to three hundred dollars, and  
6 in all criminal cases amounting to felony, and cases of misdemeanor not oth-  
7 erwise provided for ; also, in actions of forcible entry and detainer, of pro-  
8 ceedings in insolvency, of actions to prevent or abate a nuisance ; also, of all  
9 matters of probate, and, also, of divorce and for annulment of marriage, and  
10 all such special cases and proceedings as are not otherwise provided for. And  
11 said Court shall have the power of naturalization, and to issue papers there-  
12 for. They shall have appellate jurisdiction in such cases arising in Justices'  
13 and other inferior Courts in their respective counties as may be prescribed by  
14 law. Said Courts shall be always open (legal holidays and non-judicial days  
15 excepted), and their process shall extend to all parts of the State. Said  
16 Courts, and their Judges, shall have power to issue writs of mandamus, cer-  
17 tiorari, prohibition, quo warranto, and habeas corpus, on petition by or on  
18 behalf of any person in actual custody, in their respective counties. Injunc-  
19 tions and writs of prohibition may be served on legal holidays and non-judi-  
20 cial days.]

*Couch's  
Amendment*

*Harvey's Amendment*

SEC. 6. There shall be in each of the organized counties, or cities and  
2 counties, of the State, a Superior Court, for each of which at least one Judge  
3 shall be elected by the qualified electors of the county, or city and county, at



4 the general State election ; *provided*, that in the City and County of San Fran-  
5 cisco there shall be elected twelve Judges of the Superior Court; any one or  
6 more of whom may hold Court. There may be as many sessions of said  
7 Court, at the same time, as there are Judges thereof. The said Judges shall  
8 choose from their own number a presiding Judge, who may be removed at  
9 their pleasure. He shall distribute the business of the Court among the  
10 Judges thereof, and prescribe the order of business. The judgments, orders,  
11 and proceedings of any session of the Superior Court, held by any one or  
12 more of the Judges of said Courts, respectively, shall be equally effectual as  
13 if all the Judges of said respective Courts presided at such session. In each  
14 of the Counties of Sacramento, Los Angeles, and Alameda, there shall be  
15 elected two such Judges. The term of office of Judges of the Superior Courts  
16 shall be six years, from and after the first Monday of January next succeed-  
17 ing their election ; *provided*, that the twelve Judges of the Superior Court,  
18 elected in the City and County of San Francisco at the first election held  
19 under this Constitution, shall, at their first meeting, so classify themselves, by  
20 lot, that four of them shall go out of office at the end of two years, and four  
21 of them shall go out of office at the end of four years, and four of them shall  
22 go out of office at the end of six years, and an entry of such classification  
23 shall be made in the minutes of the Court, signed by them, and a duplicate  
24 thereof filed in the office of the Secretary of State. The first election of  
25 Judges of the Superior Courts shall take place at the first general election  
26 held after the adoption and ratification of this Constitution. If a vacancy  
27 occur in the office of Judge of a Superior Court, the Governor shall appoint a  
28 person to hold the office until the election and qualification of a Judge to fill  
29 the vacancy, which election shall take place at the next succeeding general  
30 election, and the Judge so elected shall hold office for the remainder of the  
31 unexpired term.

Amena Sec (6) Six

By adding in line (6)  
after the word Sacramento  
the word San Joaquin

Hitchcock

adopted

Hilman's Bay, Stockton, California

22  
11/11 11/11  
11/11 11/11  
11 11/11  
11 11  
11

11

11  
11  
11

Amend Section 6

By inserting after the word "Sonoma"  
in line 16 - the words - Santa Clara

McComas

adopted

Amend Section 6 line  
6 by striking out, "and one  
for the Counties of Essex  
and Alpine,"

Larkin

adapted

The following is section six, as amended on motion of Messrs. Belcher, Larkin, and Overton, and adopted :

[SEC. 6. There shall be in each of the organized counties, or cities and  
 2 counties of the State, a Superior Court, for each of which at least one Judge  
 3 shall be elected by the qualified electors of the county, or city and county, at  
 4 the general State election; *provided*, that until otherwise ordered by the Leg-  
 5 islature, only one Judge shall be elected for the Counties of Yuba and Sutter,  
 6 ~~and one for the Counties of El Dorado and Alpine;~~ *and, provided*, that in the  
 7 City and County of San Francisco there shall be elected twelve Judges of the  
 8 Superior Court, any one or more of whom may hold Court. There may be as  
 9 many sessions of said Court, at the same time, as there are Judges thereof.  
 10 The said Judges shall choose from their own number a presiding Judge, who  
 11 may be removed at their pleasure. He shall distribute the business of the  
 12 Court among the Judges thereof, and prescribe the order of business. The  
 13 judgments, orders, and proceedings of any session of the Superior Court, held  
 14 by any one or more of the Judges of said Courts, respectively, shall be equally  
 15 effectual as if all the Judges of said respective Courts presided at such session.  
 16 In each of the Counties of ~~Sacramento, Los Angeles, Sonoma, and Alameda,~~  
 17 ~~there shall be elected two such Judges.~~ *San Joaquin* *Santa Clara* The term of office of Judges of the  
 18 Superior Courts shall be six years, from and after the first Monday of January  
 19 next succeeding their election; *provided*, that the twelve Judges of the Superior  
 20 Court, elected in the City and County of San Francisco at the first election  
 21 held under this Constitution, shall, at their first meeting, so classify them-  
 22 selves, by lot, that four of them shall go out of office at the end of two years,  
 23 and four of them shall go out of office at the end of four years, and four of  
 24 them shall go out of office at the end of six years, and an entry of such classifi-  
 25 cation shall be made in the minutes of the Court, signed by them, and a  
 26 duplicate thereof filed in the office of the Secretary of State. The first election

*Adopted*

*San Joaquin  
amendment*

*Hechevarria  
in common  
amendment*

27 of Judges of the Superior Courts shall take place at the first general election  
28 held after the adoption and ratification of this Constitution. If a vacancy  
29 occur in the office of Judge of a Superior Court, the Governor shall appoint a  
30 person to hold the office until the election and qualification of a Judge to fill  
31 the vacancy, which election shall take place at the next succeeding general  
32 election, and the Judge so elected shall hold office for the remainder of the  
33 unexpired term.]

SEC. 7. In any county, or city and county, other than the City and  
2 County of San Francisco, in which there shall be more than one Judge of  
3 the Superior Court, the Judges of such Court may hold as many sessions of  
4 said Court at the same time as there are Judges thereof, and shall apportion  
5 the business among themselves as equally as may be.

SEC. 8. A Judge of any Superior Court may hold a Superior Court  
2 in any county, at the request of a Judge of the Superior Court thereof, and  
3 upon the request of the Governor it shall be his duty so to do.

The following is section eight, as amended on motion of Mr. Barry, and  
adopted.

*Adopted*  
[SEC. 8. A Judge of any Superior Court may hold a Superior Court  
2 in any county, at the request of a Judge of the Superior Court thereof, and  
3 upon the request of the Governor it shall be his duty so to do. But a cause  
4 in a Superior Court may be tried by a Judge pro tempore, who must be a  
5 member of the bar, agreed upon in writing by the parties litigant or their  
6 attorneys of record, approved by the Court, and sworn to try the cause.]

SEC. 9. The Legislature shall have no power to grant leave of absence  
2 to any judicial officer; and any such officer who shall absent himself from  
3 the State for more than sixty consecutive days shall be deemed to have for-

4 feited his office. The Legislature of the State may at any time, two-thirds of  
5 the members of the Senate and two-thirds of the members of the Assembly  
6 voting therefor, increase or diminish the number of Judges of the Superior  
7 Court in any county, or city and county, in the State; *provided*, that no such  
8 reduction shall affect any Judge who has been elected.

SEC. 10. Justices of the Supreme Court, and Judges of the Superior  
2 Courts, may be removed by concurrent resolution of both Houses of the Leg-  
3 islature, adopted by a two-thirds vote of each House. All other judicial  
4 officers, except Justices of the Peace, may be removed by the Senate on the  
5 recommendation of the Governor, but no removal shall be made by virtue of  
6 this section, unless the cause thereof be entered on the Journal, or unless the  
7 party complained of has been served with a copy of the complaint against  
8 him, and shall have had an opportunity of being heard in his defense. On  
9 the question of removal, the ayes and noes shall be entered on the Journal.

SEC. 11. There shall be one Justice of the Peace elected in each town-  
2 ship in the State, and the Legislature shall determine the number of Justices  
3 of the Peace to be elected in each incorporated city and town, or city and  
4 county, and shall fix by law the powers, duties, and responsibilities of Justices  
5 of the Peace; *provided*, such powers shall not in any case trench upon the  
6 jurisdiction of the several Courts of record, except that said Justices shall  
7 have concurrent jurisdiction with the Superior Courts in cases of forcible  
8 entry and detainer, where the rental value does not exceed twenty-five dollars  
9 per month and where the whole amount of damages claimed does not exceed  
10 two hundred dollars.

The following is section eleven, as amended on motion of Messrs. West,  
Mills, and Freeman, and adopted:



adulterated

[SEC. 11. The Legislature shall determine the number of Justices of the Peace to be elected in townships, incorporated cities and towns, or cities and counties, and shall fix by law the powers, duties, and responsibilities of Justices of the Peace; *provided*, such powers shall not in any case trench upon the jurisdiction of the several Courts of record, except that said Justices shall have concurrent jurisdiction with the Superior Courts in cases of forcible entry and detainer, where the rental value does not exceed twenty-five dollars per month, and where the whole amount of damages claimed does not exceed two hundred dollars, and in cases to enforce and foreclose liens on personal property when neither the amount of liens, nor the value of the property amounts to three hundred dollars.]

SEC. 12. The Supreme Court, the Superior Courts, and such other Courts as the Legislature shall prescribe, shall be Courts of record.

SEC. 13. The Legislature shall fix by law the jurisdiction of any inferior Courts which may be established in pursuance of section one of this article, and shall fix by law the powers, duties, and responsibilities of the Judges thereof.

SEC. 14. The Legislature shall provide for the election of a Clerk of the Supreme Court, County Clerks, District Attorneys, Sheriffs, and other necessary officers, and shall fix by law their duties and compensation. County Clerks shall be ex officio Clerks of the Courts of record in and for their respective counties, or cities and counties. The Legislature may also provide for the appointment, by the several Superior Courts, of one or more Commissioners in their respective counties, or cities and counties, with authority to perform Chamber business of the Judges of the Superior Courts, to take depositions, and perform such other business connected with the administration of justice as may be prescribed by law.

The following is section fourteen, as amended on motion of Mr. Belcher, and adopted:

[SEC. 14. The Legislature shall provide for the election of a Clerk of  
2 the Supreme Court, County Clerks, District Attorneys, Sheriffs, and other  
3 necessary officers, and shall fix by law their duties and compensation, which  
4 compensation shall not be increased or diminished during the term for which  
5 they shall have been elected. County Clerks shall be ex officio Clerks of the  
6 Courts of record in and for their respective counties, or cities and counties.  
7 The Legislature may also provide for the appointment, by the several Superior  
8 Courts, of one or more Commissioners in their respective counties, or cities  
9 and counties, with authority to perform Chamber business of the Judges of  
10 the Superior Courts, to take depositions, and perform such other business con-  
11 nected with the administration of justice as may be prescribed by law.]

*Adopted*

SEC. 15. No judicial officer, except Justices of the Peace and Court  
2 Commissioners, shall receive to his own use any fees or perquisites of office.

SEC. 16. The Legislature shall provide for the speedy publication of  
2 such opinions of the Supreme Court as it may deem expedient, and all opin-  
3 ions shall be free for publication by any person.

SEC. 17. The Justices of the Supreme Court and Judges of the Supe-  
2 rior Courts shall severally, at stated times during their continuance in office,  
3 receive from the State treasury, for their services, a compensation which shall  
4 not be increased or diminished during the term for which they shall have been  
5 elected. During the term of the first Judges elected under this Constitution,  
6 the annual salaries of the Justices of the Supreme Court shall be six thousand  
7 dollars each. The Superior Judges shall be divided into four classes: Those  
8 of the City and County of San Francisco, and of the Counties of Alameda,

Page

Amend ~~Report~~ ~~Law~~

Sec. 17 Line 4 after word  
"diminished" insert as follows  
"After their Election"

adoption

The  
On  
of  
to  
be  
the  
8  
the  
re

Section 17.

In line 3 strike out  
the words "from the  
State treasury."

In line 5 after the word  
"elected" insert:

The Salaries of the justices  
of the Supreme Court shall  
be paid by the State.

One half of the Salary  
of each Superior  
Court judge shall  
be paid by the State.  
The other half thereof  
shall be paid by  
the County for which  
he is elected.

M. Callum.

- 9 San
- 10 stitu
- 11 dolla
- 12 Colu
- 13 Sant
- 14 cons

Amend Sec 17 as follows  
In line 6 Strike out the words  
"thirty-five hundred; and insert  
the words "three thousand;  
Also in line eleven Strike  
out the words "four thousand five  
hundred and insert the words  
"four thousand; next

advised

Amend Section 17 by inserting in  
line 11 after the word "Sacramento,"  
the word "evada"

Cover

9 San Joaquin, Los Angeles, Santa Clara, Sacramento, and Sonoma, shall con-  
 10 stitute the first class, and shall each receive an annual salary of five thousand  
 11 dollars, payable quarterly; those of the Counties of Butte, El Dorado, Amador,  
 12 Colusa, Contra Costa, Humboldt, Mendocino, Monterey, Napa, Nevada, Placer,  
 13 Santa Cruz, Solano, Tulare, Yolo, Kern, Yuba, and San Bernardino, shall  
 14 constitute the second class, and shall receive an annual salary of four thousand  
 15 dollars each, payable quarterly; those of the Counties of Calaveras, Fresno,  
 16 Lake, Marin, Merced, Plumas, San Benito, San Diego, San Luis Obispo, San  
 17 Mateo, Santa Barbara, Sierra, Shasta, Siskiyou, Stanislaus, Sutter, Tehama,  
 18 Tuolumne, and Ventura, shall constitute the third class, and receive an annual  
 19 salary of three thousand dollars each, payable quarterly; and those of all other  
 20 counties of the State, not above enumerated, shall constitute the fourth class,  
 21 and receive an annual salary of two thousand dollars each, payable quarterly.

The following is section seventeen, as amended on motion of Messrs.  
 Wilson of First District and Walker of Tuolumne, and adopted:

[SEC. 17. The Justices of the Supreme Court and Judges of the Supe-  
 2 rior Courts shall severally, at stated times during their continuance in office,  
 3 receive ~~from the State treasury~~ <sup>after their election</sup> for their services, a compensation which shall  
 4 not be increased or diminished <sup>after their election</sup> during the term for which they shall have been  
 5 elected. <sup>first in California</sup> During the term of the first Judges elected under this Constitution,  
 6 the annual salaries of the Justices of the Supreme Court shall be six thousand  
 7 dollars each. Until otherwise changed by the Legislature, the Superior Court  
 8 Judges shall receive an annual salary of ~~thirty-five hundred~~ <sup>thirty thousand</sup> dollars each,  
 9 payable quarterly, except the Judges of the City and County of San Fran-  
 10 cisco, and the Counties of Alameda, San Joaquin, Los Angeles, Santa Clara,  
 11 Sacramento, <sup>Marade</sup> and Sonoma, which shall receive four thousand ~~five hundred~~  
 12 dollars each.] <sup>first</sup>

*Concurrent in*

SEC. 18. The Justices of the Supreme Court and the Judges of the  
2 Superior Courts shall be ineligible to any other office than a judicial office  
3 during the term for which they shall have been elected.

The following is section eighteen, as amended on motion of Mr. Morse,  
and adopted :

*Adopted*  
[SEC. 18. The Justices of the Supreme Court and Judges of the  
2 Superior Courts shall be ineligible to any other office or public employment  
3 than a judicial office or employment during the term for which they shall  
4 have been elected.]

SEC. 19. Judges shall not charge juries with respect to matters of fact,  
2 but may state the testimony and declare the law.

The following is section nineteen, as amended on motion of Mr. Her-  
rington, and adopted :

*Not correct*  
[SEC. 19. Judges shall not charge juries with respect to matters of  
2 fact, but may, except in criminal prosecutions for libel, state the testimony  
3 and declare the law.]

SEC. 20. The style of all process shall be, "The People of the State  
2 of California," and all prosecutions shall be conducted in their name and by  
3 their authority.

SEC. 21. The Justices shall appoint a Reporter of the decisions of the  
2 Supreme Court, who shall hold his office and be removable at their pleasure.  
3 He shall receive an annual salary of twenty-five hundred dollars, payable  
4 quarterly.

The following is section twenty-one, as amended on motion of Mr.  
Larkin :



Amend the article on  
Judicial Department by  
adding a section thereto  
to read as follows viz

Sec No judge of a Superior  
Court nor of the Supreme  
Court shall after the first  
day of July one thousand eight  
hundred and eighty be allowed  
to draw or receive any <sup>monthly</sup> ~~quarterly~~  
salary unless they shall severally  
take and subscribe an oath  
before the disbursing officer  
that no case in their respective  
courts remain undecided that  
has been submitted for decision  
for the period of <sup>ninety</sup> ~~thirty~~ days

Biggs

Allyle

*adopted*  
*for the*  
*amendment*

[SEC. 21. The Justices shall appoint a Reporter of the decisions of the  
2 Supreme Court, who shall hold his office and be removable at their pleasure.  
3 He shall receive an annual salary not to exceed twenty-five hundred dollars;  
4 payable ~~quarterly~~ *monthly*.]

SEC. 22. The Judges and Justices of the Peace shall not practice law  
2 in any Court of the State during their continuance in office.

*adopted*

The following is section twenty two, as amended on motion of Mr.  
Moreland, and adopted:

[SEC. 22. No Judge of a Court of record shall practice law in any  
2 Court of this State during his continuance in office.]

SEC. 23. A grand jury shall be composed of twelve jurors, and a con-  
2 currence of nine shall be necessary to the making of a presentment or the  
3 finding of an indictment.

*Concurrence*

The above section (twenty-three) was, on motion of Mr. Freeman,  
stricken out.

SEC. 24. No one shall be eligible to the office of Justice of the  
2 Supreme Court unless he be at least thirty-five years of age, and shall have  
3 been admitted to practice before the Supreme Court of the State; and no one  
4 shall be eligible to the office of Judge of a Superior Court unless he be at  
5 least thirty years of age; and shall have been admitted to practice before the  
6 Supreme Court of the State.

The following is section twenty-four, as amended on motion of Mr.  
Shurtleff, and adopted:

*Adopted*

[SEC. 24. No one shall be eligible to the office of Justice of the  
2 Supreme Court, or to the office of Judge of a Superior Court, unless he shall  
3 have been admitted to practice before the Supreme Court of the State.]

- 503 -

# JUDICIAL DEPARTMENT.

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As Amended in Convention, and Ordered Engrossed for a Second  
Reading, February 13th, 1879.

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## ARTICLE —.

### JUDICIAL DEPARTMENT.

SECTION 1. The judicial power of the State shall be vested in the Senate sitting as a Court of Impeachment, in a Supreme Court, Superior Courts, Justices of the Peace, and such inferior Courts as the Legislature may establish in any incorporated city or town, or city and county.

SEC. 2. The Supreme Court shall consist of a Chief Justice and six Associate Justices. The Court may sit in departments and in bank, and shall always be open for the transaction of business. There shall be two departments, denominated, respectively, Department One and Department Two. The Chief Justice shall assign three of the Associate Justices to each department, and such assignment may be changed by him from time to time. The Associate Justices shall be competent to sit in either department, and may interchange with each other by agreement among themselves or as ordered by the Chief Justice. Each of the departments shall have the power to hear and determine causes and all questions arising therein, subject to the provisions hereinafter contained in relation to the Court in bank. The presence of three Justices shall be necessary to transact any business in either of the departments, except such as may be done at Chambers, and the concurrence of three Justices shall be necessary to pronounce a

judgment. The Chief Justice shall apportion the business to the departments, and may, in his discretion, order any cause pending before the Court to be heard and decided by the Court in bank. The order may be made before or after judgment pronounced by a department; but where a cause has been allotted to one of the departments, and a judgment pronounced thereon, the order must be made within thirty days after such judgment, and concurred in by two Associate Justices, and if so made it shall have the effect to vacate and set aside the judgment. Any four Justices may, either before or after judgment by a department, order a case to be heard in bank. If the order be not made within the time above limited the judgment shall be final. No judgment by a department shall become final until the expiration of the period of thirty days aforesaid, unless approved by the Chief Justice, in writing, with the concurrence of two Associate Justices. The Chief Justice may convene the Court in bank at any time, and shall be the presiding Justice of the Court when so convened. The concurrence of four Justices present at the argument shall be necessary to pronounce a judgment in bank; but if four Justices, so present, do not concur in a judgment, then all the Justices qualified to sit in the cause shall hear the argument; but to render a judgment a concurrence of four Judges shall be necessary. In the determination of causes, all decisions of the Court in bank or in departments shall be given in writing, and the grounds of the decision shall be stated. The Chief Justice may sit in either department, and shall preside when so sitting, but the Justices assigned to each department shall select one of their number as presiding Justice. In case of the absence of the Chief Justice from the place at which the Court is held, or his inability to act, the Associate Justices shall select one of their own number to perform the duties and exercise the powers of the Chief Justice during such absence or inability to act.

SEC. 3. The Chief Justice and the Associate Justices shall be elected by the qualified electors of the State at large, at the general State elections, at the

times and places that State officers are elected ; and the term of office shall be twelve years, from and after the first Monday of January next succeeding their election ; *provided*, that the six Associate Justices elected at the first election shall, at their first meeting, so classify themselves, by lot, that two of them shall go out of office at the end of four years, two of them at the end of eight years, and two of them at the end of twelve years, and an entry of such classification shall be made in the minutes of the Court in bank, signed by them, and a duplicate thereof shall be filed in the office of the Secretary of State. If a vacancy occur in the office of a Justice, the Governor shall appoint a person to hold the office until the election and qualification of a Justice to fill the vacancy, which election shall take place at the next succeeding general election, and the Justice so elected shall hold the office for the remainder of the unexpired term. The first election of the Justices shall be at the first general election after the adoption and ratification of this Constitution.

SEC. 4. The Supreme Court shall have appellate jurisdiction in all cases in equity, except such as arise in Justices' Courts ; also, in all cases at law which involve the title or possession of real estate, or the legality of any tax, impost, assessment, toll, or municipal fine, or in which the demand, exclusive of interest, or the value of the property in controversy, amounts to three hundred dollars ; also in cases of forcible entry and detainer, and in all such probate matters as may be provided by law ; also, in all criminal cases prosecuted by indictment, or information in a Court of record on questions of law alone. The Court shall also have power to issue writs of mandamus, certiorari, prohibition, and habeas corpus, and, also, all writs necessary or proper to the complete exercise of its appellate jurisdiction. Each of the Justices shall have power to issue writs of habeas corpus to any part of the State, upon petition by or on behalf of any person held in actual custody, and may make such writs returnable before him-

*Insert Wilson's*

Amend Sec 4 Insert after "detainer"  
in line 6 as follows -

"And in proceedings in insolvency  
and in actions to prevent or abate a  
nuisance."

Adopted

J. Wilson

self, or the Supreme Court, or before any Superior Court in the State, or before any Judge thereof.

SEC. 5. The Superior Court shall have original jurisdiction in all cases in equity, and in all cases at law which involve the title or possession of real property, or the legality of any tax, impost, assessment, toll, or municipal fine, and in all other cases in which the demand, exclusive of interest or the value of the property in controversy, amounts to three hundred dollars, and in all criminal cases amounting to felony, and cases of misdemeanor not otherwise provided for; also in actions of forcible entry and detainer, of proceedings in insolvency, of actions to prevent or abate a nuisance; also, of all matters of probate, and, also, of divorce and for annulment of marriage, and all such special cases and proceedings as are not otherwise provided for. And said Court shall have the power of naturalization, and to issue papers therefor. They shall have appellate jurisdiction in such cases arising in Justices' and other inferior Courts in their respective counties as may be prescribed by law. Said Courts shall be always open (legal holidays and non-judicial days excepted), and their process shall extend to all parts of the State; *provided*, that all actions for the recovery of the possession of, quieting the title to, or for the enforcement of liens upon real estate, shall be commenced in the county in which the real estate, or any part thereof affected by such action or actions, is situated. Said Courts, and their Judges, shall have power to issue writs of mandamus, certiorari, prohibition, quo warranto, and habeas corpus, on petition by or on behalf of any person in actual custody, in their respective counties. Injunctions and writs of prohibition may be issued and served on legal holidays and non-judicial days.

SEC. 6. There shall be in each of the organized counties, or cities and counties of the State, a Superior Court, for each of which at least one Judge shall be elected by the qualified electors of the county, or city and county, at the general State election; *provided*, that until otherwise ordered by the Legis-

lature, only one Judge shall be elected for the Counties of Yuba and Sutter; *and, provided*, that in the City and County of San Francisco there shall be elected twelve Judges of the Superior Court, any one or more of whom may hold Court. There may be as many sessions of said Court, at the same time, as there are Judges thereof. The said Judges shall choose from their own number a presiding Judge, who may be removed at their pleasure. He shall distribute the business of the Court among the Judges thereof, and prescribe the order of business. The judgments, orders, and proceedings of any session of the Superior Court, held by any one or more of the Judges of said Courts, respectively, shall be equally effectual as if all the Judges of said respective Courts presided at such session. In each of the Counties of Sacramento, San Joaquin, Los Angeles, Sonoma, Santa Clara, and Alameda, there shall be elected two such Judges. The term of office of Judges of the Superior Courts shall be six years, from and after the first Monday of January next succeeding their election; *provided*, that the twelve Judges of the Superior Court, elected in the City and County of San Francisco at the first election held under this Constitution, shall, at their first meeting, so classify themselves, by lot, that four of them shall go out of office at the end of two years, and four of them shall go out of office at the end of four years, and four of them shall go out of office at the end of six years, and an entry of such classification shall be made in the minutes of the Court, signed by them, and a duplicate thereof filed in the office of the Secretary of State. The first election of Judges of the Superior Courts shall take place at the first general election held after the adoption and ratification of this Constitution. If a vacancy occur in the office of Judge of a Superior Court, the Governor shall appoint a person to hold the office until the election and qualification of a Judge to fill the vacancy, which election shall take place at the next succeeding general election, and the Judge so elected shall hold office for the remainder of the unexpired term.



SEC. 7. In any county, or city and county, other than the City and County of San Francisco, in which there shall be more than one Judge of the Superior Court, the Judges of such Court may hold as many sessions of said Court at the same time as there are Judges thereof, and shall apportion the business among themselves as equally as may be.

SEC. 8. A Judge of any Superior Court may hold a Superior Court in any county, at the request of a Judge of the Superior Court thereof, and upon the request of the Governor it shall be his duty so to do. But a cause in a Superior Court may be tried by a Judge pro tempore, who must be a member of the bar, agreed upon in writing by the parties litigant or their attorneys of record, approved by the Court, and sworn to try the cause.

SEC. 9. The Legislature shall have no power to grant leave of absence to any judicial officer; and any such officer who shall absent himself from the State for more than sixty consecutive days shall be deemed to have forfeited his office. The Legislature of the State may at any time, two-thirds of the members of the Senate and two-thirds of the members of the Assembly voting therefor, increase or diminish the number of Judges of the Superior Court in any county, or city and county, in the State; *provided*, that no such reduction shall affect any Judge who has been elected.

SEC. 10. Justices of the Supreme Court, and Judges of the Superior Courts, may be removed by concurrent resolution of both Houses of the Legislature, adopted by a two-thirds vote of each House. All other judicial officers, except Justices of the Peace, may be removed by the Senate on the recommendation of the Governor, but no removal shall be made by virtue of this section, unless the cause thereof be entered on the Journal, or unless the party complained of has been served with a copy of the complaint against him, and shall have had an opportunity of being heard in his defense. On the question of removal, the ayes and noes shall be entered on the Journal.

SEC. 11. The Legislature shall determine the number of Justices of the Peace to be elected in townships, incorporated cities and towns, or cities and counties, and shall fix by law the powers, duties, and responsibilities of Justices of the Peace; *provided*, such powers, shall not in any case trench upon the jurisdiction of the several Courts of record, except that said Justices shall have concurrent jurisdiction with the Superior Courts in cases of forcible entry and detainer, where the rental value does not exceed twenty-five dollars per month, and where the whole amount of damages claimed does not exceed two hundred dollars, and in cases to enforce and foreclose liens on personal property when neither the amount of liens nor the value of the property amounts to three hundred dollars.

SEC. 12. The Supreme Court, the Superior Courts, and such other Courts as the Legislature shall prescribe, shall be Courts of record.

SEC. 13. The Legislature shall fix by law the jurisdiction of any inferior Courts which may be established in pursuance of section one of this article, and shall fix by law the powers, duties, and responsibilities of the Judges thereof.

SEC. 14. The Legislature shall provide for the election of a Clerk of the Supreme Court, County Clerks, District Attorneys, Sheriffs, and other necessary officers, and shall fix by law their duties and compensation, which compensation shall not be increased or diminished during the term for which they shall have been elected. County Clerks shall be ex officio Clerks of the Courts of record in and for their respective counties, or cities and counties. The Legislature may also provide for the appointment, by the several Superior Courts, of one or more Commissioners in their respective counties, or cities and counties, with authority to perform Chamber business of the Judges of the Superior Courts, to take depositions, and perform such other business connected with the administration of justice as may be prescribed by law.

SEC. 15. No judicial officer, except Justices of the Peace and Court Commissioners, shall receive to his own use any fees or perquisites of office.

SEC. 16. The Legislature shall provide for the speedy publication of such opinions of the Supreme Court as it may deem expedient, and all opinions shall be free for publication by any person.

SEC. 17. The Justices of the Supreme Court and Judges of the Superior Court shall severally, at stated times during their continuance in office, receive for their services a compensation which shall not be increased or diminished after their election, nor during the term for which they shall have been elected. The salaries of the Justices of the Supreme Court shall be paid by the State. One-half of the salary of each Superior Court Judge shall be paid by the State; the other half thereof shall be paid by the county for which he is elected. During the term of the first Judges elected under this Constitution, the annual salaries of the Justices of the Supreme Court shall be six thousand dollars each. Until otherwise changed by the Legislature, the Superior Court Judges shall receive an annual salary of three thousand dollars each, payable ~~quarterly~~ *monthly*, except the Judges of the City and County of San Francisco, and the Counties of Alameda, San Joaquin, Los Angeles, Santa Clara, Sacramento, Nevada, and Sonoma, which shall receive four thousand dollars each.

SEC. 18. The Justices of the Supreme Court and Judges of the Superior Courts shall be ineligible to any other office or public employment than a judicial office or employment during the term for which they shall have been elected.

SEC. 19. Judges shall not charge juries with respect to matters of fact, but may state the testimony and declare the law.

SEC. 20. The style of all process shall be, "The People of the State of California," and all prosecutions shall be conducted in their name and by their authority.

Amend Section 17  
by inserting Butte after  
the word Nevada in last  
line but one  
magg

Adopted - 79-46

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adopted

Amend. Section 17

By inserting the words "Yuba  
and Sutter Combined" between  
the words Sacramento and  
Nevada where they occur in  
the last line but one in this section  
Belcher ~~Stacy~~

SEC. 21. The Justices shall appoint a Reporter of the decisions of the Supreme Court, who shall hold his office and be removable at their pleasure. He shall receive an annual salary not to exceed twenty-five hundred dollars, payable monthly.

SEC. 22. No Judge of a Court of record shall practice law in any Court of this State during his continuance in office.

SEC. 23. No one shall be eligible to the office of Justice of the Supreme Court, or to the office of Judge of a Superior Court, unless he shall have been admitted to practice before the Supreme Court of the State.

SEC. 24. No Judge of a Superior Court nor of the Supreme Court shall, after the first day of July, one thousand eight hundred and eighty, be allowed to draw or receive any monthly salary unless they shall severally take and subscribe an oath, before the disbursing officer, that no cause in their respective Courts remains undecided that has been submitted for decision for the period of ninety days.

*Proposed*  
*Adopted*

SEC. 24. No Judge of a Superior Court nor of the Supreme Court shall, after the first day of July, one thousand eight hundred and eighty, be allowed to draw or receive any monthly salary unless they shall severally take and subscribe an ~~oath~~ <sup>affidavit before an officer entitled to administer oaths</sup>, before the ~~disbursing officer~~, that no cause in ~~their respective~~ <sup>this</sup> Court remains undecided that has been submitted for decision for the period of ninety days.

*adoption*

*By 90*

*By*



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Report of L. L. L. L. L.  
Committee of Reporting and Printing  
acting as Committee on En-  
grossment on the

Articles on Judiciary  
Revenue & Taxation

Feb 19-1879  
Reported, Correctly  
Engraved

Ed F. Smith  
Acty

Feb 25-1879  
Read a second time  
adopted and referred  
to be on Adjournment  
& Revision

Thornburn  
and Secy